



**Agricultural Marketing Service**

**7 CFR Part 984**

**[Doc. No. AMS-FV-11-0062; FV11-984-1 FR]**

**Walnuts Grown in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Walnut Board (Board) for the 2011-12 and subsequent marketing years from \$0.0174 to \$0.0175 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year began September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA;

Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Jeffrey.Smutny@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Laurel.May@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable

walnuts beginning on September 1, 2011, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2011-12 and subsequent marketing years from \$0.0174 to \$0.0175 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect

assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2010-11 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0174 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 9, 2011, and unanimously recommended 2011-12 expenditures of \$7,402,450 and an assessment rate of \$0.0175 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$6,812,000. The assessment rate of \$0.0175 is \$0.0001 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2011-12 marketing year is estimated at 470,000 tons (inshell),

which is 35,000 tons more than the 435,000 during the 2010-11 marketing year. At the recommended higher assessment rate of \$0.0175 per kernelweight pound, the Board should collect approximately \$7,402,500 in assessment income, which would be adequate to cover its 2011-12 budgeted expenses of \$7,402,450.

The following table compares major budget expenditures recommended by the Board for the 2010-11 and 2011-12 marketing years:

<b>Budget Expense Categories</b>	<b>2010-11</b>	<b>2011-12</b>
Employee Expenses	\$ 577,500	\$ 693,500
Travel/Board Expenses/Annual Audit	\$ 208,000	\$ 218,000
Office Expenses	\$ 118,850	\$ 117,750
Program Expenses Including Research		
Controlled Purchases	\$ 20,000	\$ 20,000
Crop Acreage Survey	\$ 95,000	\$ 95,000
Crop Estimate	\$ 105,000	\$ 115,000
Production Research Director	\$ 88,500	\$ 88,500
Production Research	\$1,042,000	\$1,036,000
Sustainability Project	\$ -0-	\$ 25,000
Grades and Standards Research	\$ 125,000	\$ 150,000
Block Grant Research	\$ -0-	\$ 200,000
Domestic Market Development	\$4,400,000	\$4,635,000

Reserve for Contingency	\$ 32,250	\$ 8,700
-------------------------	-----------	----------

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California walnuts certified as merchantable. The 470,000 ton (inshell) estimate for merchantable shipments is an average of the two prior year's shipments. The Board met on June 9, 2011, and unanimously approved using a two prior years' average to formulate the 2011-12 estimate. Pursuant to §984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (470,000 tons x 2,000 pounds per ton x 0.45), which yields 423,000,000 kernelweight pounds. At \$0.0175 per pound, the new assessment rate should generate \$7,402,500 in assessment income and allow the Board to cover its expenses.

Section 984.69 of the order authorizes the Board to maintain a financial reserve of not more than two years' budgeted expenses. Excess assessment funds may be retained in the reserve or may be used temporarily to defray expenses of the subsequent marketing year, but if so used, must be

made available to the handlers from whom they were collected within five months after the end of the marketing year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Board's 2011-12 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact

of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 4,500 growers of California walnuts in the production area and approximately 74 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those having annual receipts are less than \$7,000,000.

According to the 2007 Census of Agriculture, approximately 89 percent of California's walnut farms were smaller than 100 acres.

USDA's National Agricultural Statistics Service (NASS) reports that the average yield for the 2010-11 crop was 2.22 tons per acre. NASS also reported the average price received for the 2010-11 crop was \$2,110 per ton.



A 100-acre farm with an average yield of 2.22 tons per acre would therefore have been expected to produce about 222 tons of walnuts during 2010-11. At \$2,110 per ton, that farm's production would have had an approximate value of \$468,420. Assuming that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$468,420 in 2010-11, which is well below the SBA threshold of \$750,000. Thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under \$7,000,000 during the 2010-11 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule increases the assessment rate established for the Board and collected from handlers for the 2011-12 and subsequent marketing years from \$0.0174 to \$0.0175 per kernelweight pound of assessable walnuts. The Board unanimously recommended 2011-12 expenditures of \$7,402,450 and an assessment rate of \$0.0175 per kernelweight pound of assessable walnuts. The assessment rate of \$0.0175 is \$0.0001 higher than the 2010-11 rate. The quantity of

assessable walnuts for the 2011-12 marketing year is estimated at 470,000 tons inshell weight, or 423,000,000 pounds kernelweight. Thus, the \$0.0175 rate should provide \$7,402,500 in assessment income and be adequate to meet this year's expenses. The increased assessment rate is primarily due to increased budget expenditures.

The following table compares major budget expenditures recommended by the Board for the 2010-11 and 2011-12 marketing years:

<b>Budget Expense Categories</b>	<b>2010-11</b>	<b>2011-12</b>
Employee Expenses	\$ 577,500	\$ 693,500
Travel/Board Expenses/Annual Audit	\$ 208,000	\$ 218,000
Office Expenses	\$ 118,850	\$ 117,750
Program Expenses Including Research		
Controlled Purchases	\$ 20,000	\$ 20,000
Crop Acreage Survey	\$ 95,000	\$ 95,000
Crop Estimate	\$ 105,000	\$ 115,000
Production Research Director	\$ 88,500	\$ 88,500
Production Research	\$1,042,000	\$1,036,000
Sustainability Project	\$ -0-	\$ 25,000
Grades and Standards Research	\$ 125,000	\$ 150,000
Block Grant Research	\$ -0-	\$ 200,000
Domestic Market Development	\$4,400,000	\$4,635,000
Reserve for Contingency	\$ 32,250	\$ 8,700

The Board reviewed and unanimously recommended 2011-12 expenditures of \$7,402,450. Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order. The assessment rate of \$0.0175 per kernelweight pound of assessable walnuts was derived by dividing anticipated expenses of \$7,402,450 by expected shipments of California walnuts certified as

merchantable. Merchantable shipments for the year are estimated at 423,000,000 pounds, which should provide \$7,402,500 in assessment income and allow the Board to cover its expenses. Unexpended funds may be retained in a financial reserve, provided that funds in the financial reserve do not exceed approximately two years' budgeted expenses. If not retained in a financial reserve, unexpended funds may be used temporarily to defray expenses of the subsequent marketing year, but must be made available to the handlers from whom collected within 5 months after the end of the year, according to § 984.69 of the order.

According to NASS, the season average grower prices for the years 2009 and 2010 were \$1,710 and \$2,110 per ton, respectively. These prices provide a range within which the 2011-12 season average price could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of \$0.86 to \$1.06. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order yields a 2011-12 price range estimate of \$1.91 to \$2.36 per kernelweight pound of assessable walnuts.

To calculate the percentage of grower revenue represented by the assessment rate, the assessment rate of \$0.0175 per kernelweight pound is divided by the low and

high estimates of the price range. The estimated assessment revenue for the 2011-12 marketing year as a percentage of total grower revenue will thus likely range between .74 and .92 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry, and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the June 9, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary.

Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2011 (75 FR 50703). Copies of the proposed rule were also mailed or sent via facsimile to all walnut handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending on September 15, 2011, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
<http://www.ams.usda.gov/MarketingOrderSmallBusinessGuide>. Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2011-12 marketing year began on September 1, 2011. Further, the marketing order requires that the rate of assessment for each marketing year apply to all assessable walnuts handled during the year; the Board needs to have sufficient funds to meet its expenses which are incurred on a continuous basis; and handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

**PART 984 - WALNUTS GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 984.347 is revised to read as follows:

**§ 984.347 Assessment rate.**

On and after September 1, 2011, an assessment rate of \$0.0175 per kernelweight pound is established for California merchantable walnuts.

Dated: October 26, 2011

David R. Shipman  
Acting Administrator  
Agricultural Marketing Service

[FR Doc. 2011-28198 Filed 10/31/2011 at 8:45 am; Publication Date: 11/01/2011]